

FILED
At Albuquerque NM

FEB 01 2013 *MD*

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, on the relation
The State Engineer,
07941-MV/LFG

Case No. 69cv-

Plaintiff,

Rio Chama Stream System

v.

Section 1 (mainstream)

ROMAN ARAGON, et al,

Defendants.

To: The Honorable Magistrate Judge Lorenzo F. Garcia

From Defendant: david ortiz, Plebian,
Acequia de Chamita

Proposed

Acequia de Chamita Parciante Findings of Fact and
Conclusion regarding our Priority Date

David Ortiz Parciante and Commissioner of the Acequia de Chamita, and Cecilia Ortiz, Husband and Wife, both known and identified as Subfile 267 on Map 22, Tract 17, by the State of New Mexico, Come now before the Court and the Special Master and request that the following Findings of Fact and Conclusion be adopted with regard to the Establishment Date of our water rights under the Acequia de Chamita. The date of change of ownership from Alfredo Salazar Sr. to us is January 30, 1976, property rights which included the water. We draw our water from the Acequia de

Chamita. I cannot separate myself from the Acequia, or else I would have no water. The Acequia has a perpetual easement through my property. I have the same establishment date as the Acequia. I do not have a different establishment date then the Acequia. The Acequia was dug first, on August 11, 1598, after, the lots were assigned for irrigation rights of the land, of which I am now the present owner. I am the expert on the history of the establishment date of my Acequia de Chamita, based on evidence and exhibits I have submitted to the Court and this is the summary of facts and conclusions;

FINDINGS OF FACT: True History of the Acequia de Chamita

Introduction: Doc.9597, filed 2/20/2010 State of New Mexico's Motion to Adopt, *in part*, To Modify and Objections to Special Master's Report on Priorities for Three Acequias. Page 4. "While the above requested modifications may seem minor in nature, the State makes these requests because questions regarding the historical events in this area are likely to arise in other contexts in these proceedings. For this reason, the Court's adoption of findings of fact should be as accurate as possible to avoid confusion and the need for clarification in the future."

1. On September 21, 1595, Viceroy Don Luis de Velasco, governor of New Spain, was read and examined the petition offered by Don Juan de Onate and accepted the offer for the discovery, pacification and conquest of the provinces of New Mexico.

2. Laws of the Indies 1573, #2: The Viceroy was responsible for choosing the best suited person to carry out discoveries, negotiate a contract and issue a license to proceed with the discovery according to the Laws of the Indies.

3. Onate many years previous to his offer had made a careful study to find out all he could learn about the "new" provinces for the King to expand his Empire.

4. Laws of the Indies 1573, #34: The following sequence should be adhered to in selecting the site: a. Choose the province, county and place that will be settled, b. Consider the health of the area, c. from the abundance of old men, d. or of young men of good complexion, e. of natural fitness and color, f. without illness, g. the abundance of healthy animals and of sufficient size, h. healthy fruits and fields, i. of good climate, j. the sky clear and benign, k. the air pure and soft, l. of good temperature, without excessive heat or cold, having to decide it is better to be cold.

5. On April 30, 1598, Don Juan de Onate dispatched by King Phillip II of Spain, took possession for the Spanish Empire of all "things" he would set foot on, at the Rio del Norte in the area we now know as El Paso.

6. Onate went ahead of the main party with an advance army of approximately 60 soldiers to scout and find a road for the main army with the carts.

7. Laws of the Indies 1573, #35: they should be in fertile areas with an abundance of fruits and fields, of good land to plant and harvest, of grasslands to grow livestock, of mountains and forests for wood and building materials for homes and edifices and of good and plentiful water supply for drinking and irrigation.

8. Onate and the advanced army arrived at a cluster of Indian pueblos at the confluence of the Zama (Chama River) and the Rio del Norte on July 11, 1598. They settled in the 400 house Indian pueblo the Okhay Owingeh pueblos, they named San Juan, after John the Baptist, and San Gabriel, where they established the Royal government. It was here they would begin to convert the Indians to Catholicism. The province and valley was also named San Juan and comprised all the pueblos in the valley.

9. Laws of the Indies 1573, #110. Having made the discovery, selected the province and the site in the location where the new town is to be built, and having taken possession of it, those placed in charge of its

execution are to do it in the following manner: On arriving at the new place where the new settlement is to be founded- which according to our will and disposition shall be one that is vacant and that can be occupied without doing harm to the Indians and natives or with their free consent- a plan for the site is to be made, dividing it into squares, streets and building lots, using cord and ruler.....

10. Laws of the Indies 1573, #40.(A)nd in case there should be a need to build on the banks of a river, it should be on the eastern bank, so that when the sun rises it strikes the town first, then the water.

11. Laws of the Indies 1573, #36: And that they should be populated by Indians and natives to whom we can preach the gospel since this is the principal objective for which we mandate these discoveries and settlements be made.

12. Onate went north to subjugate the pueblos of Picuris and Taos on the 13th of July, 1598 and on the 19th returned to the valle de San Juan.

13. Onate visited the following pueblos on the following dates: On the 20th San Ildefonso; on the 21st to San Marcos; on the 22nd to San Cristobal; on the 24th to Galisteo, which they named Sant Ana; on the 25th to Pecos, which Espejo called the province of the Tamos; on the 26th, they returned to San Cristobal for dinner and spent the night at San Marcos; on the 27th they returned to the valley of Santo Domingo. The maese de campo arrived with all the carts and the main part of the army, almost at the same hour. They remained together until August 1.

14. On August 2, after mass in the church of the friars of St. Francis, the governor set out for the province of the Emes. They spent the night at the great pueblo of Tzia.

15. On August 3, they went on to the great pueblo of Emes. They found an Indian wearing a patten which belonged to two friars that had

been killed in the first discovery and traded hawks bells for it. It is now kept in the ciborium of this convent of San Juan, they wrote.

16. On the 4th they went down to other Emes pueblos. They were told there were 11, they saw 8.

17. On the 5th they went down to the last pueblo where they saw the marvelous hot baths the waters of which rise in many places. They are unusual marvels of nature, having cold and very hot waters, and many deposits of sulphur and alum.

18. On the 6th after mass at the convent there, which they named the Transfiguration, they left and camped for the night on their way back to headquarters.

19. On the 7th they arrived back at Santo Domingo.

20. On the 8th & 9th they left and remained in San Ildefonso.

21. On the 10th after mass, they went to San Juan.

22. On the 11th they began work on the irrigation ditch (Acequia) for the city of our father, Sant Francisco, de los Espanoles.. Some fifteen hundred barbarian Indians gathered on this day and helped with the work.

23. Laws of the Indies 1573, #130-131-132. Farm land was assigned by lottery, irrigated lands by lot distributed in same proportion as the settlers lots. The settlers should immediately plant the seeds they brought to obtain abundant food and then build their houses. The cattle branded, gathered in pastures so that they may soon begin to breed and multiply.

24. The Acequia was necessary for the Spanish Colonizers to maintain and sustain themselves in Spain's new expanding Empire.

25. The Spanish Colonists under Onate were prepared to farm, to produce their own sustenance by bringing seeds and tools, irrigating their lands from an Acequia irrigation system in their settlement for their use and maintenance.

26. Laws of the Indies 1573, #39. The site and position of the towns should be selected in places where water is nearby and where it would be possible to demolish neighboring towns and properties in order to take advantage of the materials that are essential for building; and [these sites and positions should be suitable] also for farming, cultivation and pasturation, so as to avoid excessive work and cost, since if any of the above would be costly if they were far.

27. They waited for the main army and the carts until August 18 of the said year, 1598, when they arrived.

28. On the 23rd, the building of the church was started, and it was completed on September 7. It was suitable for the people of the camp. (460 to 500)

29. Laws of the Indies 1573, #119. For the temple of the principal church, parish, or monastery, there shall be assigned specific lots; the first after the streets and plazas have been laid out, and these shall be a complete block so as to avoid having other buildings nearby, unless it were for practical or ornamental reasons.

30. On September 8, the great celebration of the dedication of the church of Saint John the Baptist took place. The Church was in San Gabriel, identified as one of the San Juan Cluster of Pueblos. It was blessed by the father commissary, Fray Alfonso de Martinez, who also consecrated the altar and the chalices. Father Salazar delivered the sermon. In the afternoon the whole camp celebrated with a good sham battle between Moors and Christians.

31. On the 9th, a general assembly was held of all the country thus far discovered, and its provinces were distributed among the eight friar priests of the order of Saint Francis.

32. On September 9, 1598, Father Salazar was assigned the province of the Teguas, the pueblos of San Yldefonso, Santa Clara, this pueblo of San Juan Bautista and San Gabriel and in addition the city of San Francisco de los Espanoles, which is being built now.

33. In the San Juan valley, province of the Teguas, he left Father Fray Cristobal de Salazar, and his companion, Fray Juan de San Buenaventura, a lay brother. They were placed in charge of the camp and its Indians.

34. Laws of the Indies 1573, #135-137. While building the town, with care and hurry to complete, the settlers should try to avoid communication and traffic with the Indians, or going to their towns, or amusing themselves or spilling themselves on the ground [sensual pleasures]; nor should they allow the Indians to enter within the confines of the town until it is built. The settlers should build their own town without taking what belongs to the Indians and without doing them more harm that it were necessary for the protection of the town in order that the settlers are not disturbed.

35. The Enrico Martinez map shows what was under Spanish Domain in 1602. It is a freehand drawn map, not to scale, not accurate in place or spelling of names or complete, as the notes on the map note.

36. Torquemada in his *Monarchia Indiana*, cap. XXXVII, identifies the place where the Royal Seat of the Spanish Government was established, as being named San Gabriel and being located between two rivers, irrigated by the smaller, the larger one named del Norte. He describes all the things that are grown there by irrigation water taken from the smaller river, like wheat, barley, corn and Castilian garden vegetables.

37. The previous chapter of Torquemada's cap. XXXVII in *Libro Quinto*, page 672, is written in November, 1602.

38. In Torquemada Libro Quinto, CAP. XXXX, he repeats what has already been stated in XXXVII. On the same page, 678, the previous chapter, the date of 1608 is mentioned.

39. The date of the digging of an irrigation ditch (Acequia) on August 11, 1598 is the only mention given for the digging of an irrigation ditch in the historical documents.

40. The location of the irrigation of crops and gardens given by Torquemada as being out of the smaller river is the place where Onate settled and established the Spanish seat of government which was called San Gabriel.

41. The present day Acequia de Chamita is the Acequia established on August 11, 1598 and the one in Torquemada's Monarchia Indiana, San Gabriel, irrigating the wheat, barley and vegetables out of the smaller river.

42. Multitudes of Witnesses under Oath gave testimony, that in the three years they had been at San Gabriel (1598-99-1600-01) they were planting and harvesting grains and vegetables, and it was increasing every year.

43. Laws of the Indies 1573. #137. One of the witnesses, Geronimo Marquez seems to fit the following: At the beginning of the building of the town, the governor shall name one person who will occupy himself with the sowing and cultivation of land, planting of grains and vegetables so that the settlers can be assisted in their maintenance.

44. Many witnesses testified under Oath, that they lived in the 400 house Indian pueblo, in which they cut doors and windows in the Spanish custom, where the governor had established his headquarters which was named San Gabriel, across the river from the other Pueblo. They said they sent the Indians to the other pueblo and that some had stayed as servants in the Spanish houses and that the Indians came and helped them with planting and cultivation.

45. The witnesses said that from the pueblo they named San Gabriel the 400 house Indian pueblo they had occupied, they could see the other pueblo across the river.

46. There is no evidence given by the two historians of an Acequia irrigating lands on the "east" side of the Rio del Norte in 1598-99 or 1600.

47. The States Historian and the Rio Chama Acequia Association Historian failed to provide any factual evidence of an August 11, 1598 Acequia being established on the "east" bank of the Rio Grande.

48. The State admits there is no evidence presented at the 1996 Trial of an "east" bank Acequia, by hiring a historian to look for and submit evidence.

49. Genealogical research is the method used to establish the link between community members and the 1598 Spanish Colonizers.

50. The Genealogical research conducted by David Ortiz shows family ties to 6 of the soldiers who came with Onate in 1598.

51. Genealogical research by Eloy Garcia, residing in Chamita, serving as present Mayordomo since 1999 showing ancestral family ties to the 1598 Colonizers.

52. To fail to recognize the August 11, 1598 establishment date of the present day named Acequia de Chamita would deny the accurate historical date of the earliest and principal irrigation "ditch" in the Spanish Empire of Nueva Mexico, that is now the United States of America.

53. The recognition of August 11, 1598 as Acequia de Chamita date of establishment is historically factual.

54. Research done by anthropologists, archeologists and State historians has shown that the Chamita area is the present physical location of historic San Gabriel.

55. The Acequia de Chamita is not a ditch but is in fact a self governing body of members with rights of ownership and use of water to irrigate their lands, from between the banks of the Acequia canal.

56. It is settled History. National Historic Preservation, New Mexico State Legislature, Rio Arriba County, City of Espanola, The Utton Center, State Historians, Archeologists, and the Acequia de Chamita Membership.

CONCLUSIONS of LAW

1. The digging of the Acequia began at San Gabriel on August 11, 1598 by Don Juan de Oñate and the Spanish settlers using 1500 barbarian Indians. San Gabriel 1598, is in the same area as Chamita in 2013.

2. The only way to irrigate lands in Chamita today, is through the same location that was used for irrigation in San Gabriel in 1598.

3. The Acequia de Chamita is the same Acequia as the Acequia in San Gabriel.

4. The establishment date for the first irrigation of lands under the Acequia de Chamita, is August 11, 1598.

5. The weight of the evidence supports the establishment date of the Acequia de Chamita, in Chamita, formerly San Gabriel.

6. The Acequia Attorney and his expert historian has failed to provide any clear and convincing evidence of first use of water for the Acequia de Chamita is 1600.

7. The Acequia Attorney and expert historians have misled and misinformed the Special Master with the stipulation based on opinion and no factual evidence for support.

8. The Plaintiff and his expert historian have failed to show any evidence of an Acequia on the "east" bank of the Rio Grande.

9. The Plaintiff and his expert historian have failed to show any evidence of an Acequia being dug on the "west" bank of the Rio Grande in 1600, much less three.

10. The State acknowledges that the two historians who stipulated an "east" bank Acequia in 1598 off the Rio Grande did not submit evidence in their exhibits, by hiring one of them to provide historical documentation for this trial.

11. The Acequia de Chamita Commissioners and members in 1996 were not served with the RCAA Lawyer and Historian exhibits of the 1996 trial and did not know of the "1600" capitulation.

12. Special Master, Doc.9546, filed 12/09/2009, page 8, B. Standard of Proof: Clear and convincing evidence "instantly tilt[s] the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true." There was no opposition and no clear and convincing evidence for an east bank 1598 Acequia and three west bank acequia's in 1600.

13. Special Master, Doc.9546, filed 12/09/2009, page 10, Standard of Proof: While the State's evidence may be "reliable and credible," I disagree it rises to the level of "clear and convincing." In fact, no evidence introduced by either party during these hearings allows the fact finder to construct very much more than plausible inferences.

14. We are the opposition that fell through the crack in 1996, and now I have come to present my opposition with objection and clear and convincing evidence in court.

The Special Master's recommendation, that the first use of water for Acequia de Chamita as 1600, should be "set aside", reanalyzed and

modified to reflect the true and factual establishment date of August 11, 1598 for the Acequia de Chamita.

15. The Special Masters Findings of Fact and Conclusions of Law for a 1600 establishment date are clearly erroneous because of the lack of "clear and convincing" evidence in the exhibits presented to her.

16. The Acequia de Chamita's Lawyer Findings of Facts and Conclusions of law, dated 97 APR -2, (No Certificate of Service) are clearly erroneous and should be set aside; any reference to Acequia de Chamita should reflect the true establishment date of August 11, 1598.

17. This plebian, David Ortiz, was excluded in 1996 as the State acknowledges; because "he fell through the cracks", along with 4 acknowledged others.

18. All of the Ohkay Owingeh villages, in close proximity to one another are referred to as the "San Juan Cluster". p15-6 Exh.TT

19. The population of Ohkay Owingeh and affiliated villages, including Yunque Owingeh was at least 1500 at the time of Onate's arrival. Exh. p16 TT

20. According to contemporary record of his initial visitation, Onate conscripted 1,500 Indians to dig the first Iberian-style irrigation ditch at Yunque Owingeh, which he renamed as San Gabriel, making it the first Spanish Capital of New Mexico. p16 Exh. TT

21. The earlier name (San Juan) was bestowed in 1598 by the first Spanish colonial governor, Juan de Onate. His long caravan of colonists, wagons, and domestic stock arrived on August 11, 1598, and was taken into Yunque Owingeh where residence was established. p2 Exh.UU`

22. Juan de Onate and his colonists settled at the confluence of the Rio Grande and Rio Chama in 1598. p22 Exh.UU

23. In 1598 Ohkay Owingeh was the first pueblo to be colonized. p37 Exh.UU

24. It was forced to relinquish rooms in its sister village, Yunque, for permanent Spanish settlers' and soldiers' occupancy. p37 Exh.UU

25. This subfile 267, map 22, tract 17, David Ortiz and Cecilia S. Ortiz, husband and wife, parciante and commissioner of the Acequia de Chamita requests of the Special Master and or the Judge that if a priority date is to be assigned to us, it should be same as the Acequia de Chamita, our Acequia from which we draw our water to irrigate our lands, it should be the historically factual date of August 11, 1598.

Grand Conclusion

The State Historian, the Rio Chama Acequia historian and his lawyer capitulated and stipulated that three acequia's were dug on the west bank of the Rio Grande and on the Chama River in 1600.

They failed to supply any supporting historical fact to back up that opinion.

The Special Master took 13 years looking for any evidence for three Acequia being dug in 1600 on the west bank of the Rio Grande in the Chama river confluence. What else could she do with what she had been given?

The State Historian states in the opening statement of his report, that he was asked to identify the first Spanish settlement in New Mexico.

The States Attorney told me he had been asked to identify the August 11, 1598 Acequia, since it had not been addressed in the 1996 trial.

The Historian has spent all his time in his exhibits trying to prove the Colonists had settled in the Indian pueblo on the east bank of the Rio Grande, dug an Acequia and shared the houses with the Indians until the

summer of 1600 and then moved to the Indian pueblo directly across the Rio Grande.

They then dug not only one, but 3 ditches off of the Rio Chama. He has failed to supply that historical documentation, nor can he.

In the contemporary historical documents of that era, his and mine, one and the same, there is only historical facts to support one Acequia even until 1610, which includes Torquemada if you accept the dates on Torquemada's two pages of planting, irrigating and harvesting in one place, the villa of San Gabriel.

If the Court should eliminate all the secondary sources and opinions of historians what remains is The Spanish Empire Laws of the Indies, Onate the Colonizer, Villagra and Torquemada, and their authors and only one Acequia that was established in the Royal Spanish settlement on August 11, 1598 in the villa of San Gabriel, the city of the Franciscan priests with the church and convents.

It is located between two rivers, the smaller one irrigates the grains and vegetables that are planted and grown there.

That's where they were living and growing grains and vegetables to maintain the colony. In the 400 house Indian pueblo of Yungue, that they named San Gabriel, directly across and in sight of the other pueblo of San Juan, right across the Rio Grande.

We, the descendants (David and Cecilia Ortiz) of those Spanish Colonizers are still here irrigating the same lands; the pueblos, the Indians, the Spanish descendants and the August 11, 1598 Acequia out of the smaller Chama river are still here. Amen and Amen.

Case: 6:69-cv-07941-BB

Respectfully Submitted by Defendant David Ortiz,



David Ortiz

(Signature of Defendant)

David Ortiz, Commissioner/Treasurer

DAVID ORTIZ

(Printed name of Defendant)

P.O. Box 1082

(Street address or P.O. Box)

SAN JUAN Pueblo, NM

(City, State and Zip Code) 87506

Tract 17

Map 22

Subfile 267